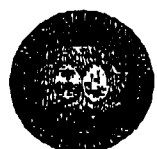




Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Phone: 803-896-5100
Fax: 803-896-5199
www.psc.sc.gov

2010-79C



Complaint Form

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Date: February 24, 2010

Complainant or Legal Representative Information: * Required Fields

Name * Federick ("Rick") B. Tyler Jr., Esq.
Firm (if applicable) Waffle House, Inc.
Mailing Address * P.O. Box 6450
City, State Zip * Norcross, GA 30091 Phone * (770) 326 - 7037
E-mail * ricktyler@wafflehouse.com

Name of Utility Involved in Complaint: * Palmetto Utilities, Inc.

NOTE: If AT&T is the utility involved, please complete the attachment located at the end of this form.

Type of Complaint (check appropriate box below.) *

- | | | | |
|--|--|--|---|
| <input type="checkbox"/> Billing Error/Adjustments | <input type="checkbox"/> Deposits and Credit Establishment | <input type="checkbox"/> Wrong Rate | <input type="checkbox"/> Refusal to Connect Service |
| <input checked="" type="checkbox"/> Disconnection of Service | <input type="checkbox"/> Payment Arrangements | <input type="checkbox"/> Water Quality | <input type="checkbox"/> Line Extension Issue |
| <input type="checkbox"/> Service Issue | <input type="checkbox"/> Meter Issue | | |
| <input type="checkbox"/> Other (be specific) | | | |

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No Name of ORS Contact: Willie Morgan, ORS Program Manager

Concise Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

See complaint narrative as attached hereto as Exhibit "A"

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

See relief requested as attached hereto as Exhibit "B"

~~GEORGIA~~
STATE OF SOUTH CAROLINA)
COUNTY OF SWINNETT)

VERIFICATION

I, Federick B. Tyler Jr., Esq. verify that I have read my complaint filed on 02/24/2010
Complainant's Name * Date *
and know the contents thereof, and that said contents are true.

Federick B. Tyler Jr.
Complainant's Signature *
Page 1 of 2 Vice President/Corporate Counsel

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H.E.	

Waffle House, Inc Complaint dated February 24, 2010

Exhibit "A"

Concise Statement of Facts/Complaints

1. Palmetto Utilities, Inc. ("PUI") currently provides sewer services for Waffle House restaurant #889, located at 216 Blythewood Road, Blythewood, SC 29016 ("Unit #889") and Waffle House restaurant #847 located at 1001 Clemson Frontage Rd, Columbia SC 29223 ("Unit #847"), both of which Units are owned and operated by Waffle House, Inc. ("WHI")
2. On or about August 1, 2009, PUI implemented Sand, Oil and Grease Interceptor Standards ("Standards") purporting to regulate grease interceptors or grease traps within the PUI service area.
3. Since early January 2010, PUI has repeatedly threatened WHI by oral and written communication that PUI will discontinue sewer service at Units #847 and #889 if WHI, at its sole cost and expense, does not make certain "improvements" to its existing grease traps at these Units ("Grease Trap Improvements").
4. WHI believes that the total cost of Grease Trap Improvements at both Units will be in excess of \$5,000.00.
5. PUI's discontinuation of sewer service at either or both of WHI's Units would require WHI to shut down its restaurant operations resulting in serious harm to its business reputation, substantial economic damage in lost sales and profits, loss of wages for its employees and loss of tax revenue to the City.
6. WHI has fully functioning grease traps at Unit #847 (opened for business on June 14, 1992) and at Unit #889 (opened for business on February 21, 1993). WHI hired Shealy Environmental Services, Inc. to test the grease trap effluent at each Unit. Shealy's reports (for Unit #889 dated January 6, 2010 and for Unit #847 dated February 3, 2010) showed that the fats, oil and grease ("FOG") in the effluent from these grease traps was less than 100 mg/l as required by PUI's Standards.
7. WHI submits that PUI does not have the authority to compel WHI to incur the cost of Grease Trap Improvements at Units #847 and #889, or to discontinue sewer service at these Units if WHI fails to do so, for the following reasons:
 - (a) No where in PUI's rate schedule does the Public Service Commission ("Commission") expressly authorize PUI to require existing, lawfully operating restaurants with existing grease traps to incur the expense of installing Grease Trap Improvements.
 - (b) PUI's requirement to install the Grease Trap Improvements is in effect a rate increase (albeit a one time rate increase) because if WHI does not make the Grease Trap Improvements, PUI intends to discontinue sewer service just as it would if WHI failed to pay its monthly sewer service bills. The Commission has not authorized this rate increase.
 - (b) PUI's attempt to coerce (by threat of discontinuation of service) WHI into making the Grease Trap Improvements is arbitrary and capricious for the following reasons: (i) PUI has not made any showing or offered any analytical evidence to WHI that WHI's existing grease traps are either not functioning properly or do not meet the FOG effluent requirements of PUI's Standards, (ii) WHI does not believe that PUI has offered any evidence or made any showing to the Commission that grease traps of the type in use at WHI's Units are either not functioning properly or exceed the FOG effluent requirements of PUI's Standards, (iii) that, even if WHI's existing grease traps exceed the FOG effluent requirements of PUI's Standards, WHI does not believe that PUI has offered adequate scientific or other evidence to the Commission in order for the Commission to conclude that the Grease Trap Improvements (installed at restaurant operator's expense) will actually accomplish their intended purpose.

Waffle House, Inc Complaint dated February 24, 2010

Exhibit "B"
Relief Requested

(Capitalized terms and abbreviations in this Exhibit "B" have the same meaning as ascribed to them in Exhibit "A".)

Waffle House hereby respectfully requests a hearing before the Commission and further requests the following relief:

- a) An order barring PUI from discontinuing sewer service at Units #847 and #889 for failure to install Grease Trap Improvements until this complaint is heard and the Commission makes a final determination.
- b) An order requiring an investigation of this complaint.
- c) A determination of whether or not Section 8 of PUI's rate schedule gives it the unfettered right to compel a restaurant owner with an existing, lawful grease trap to make Grease Trap Improvements at the restaurant owner's expense without any determination of appropriateness by, or the express approval of, the Commission.
- d) A determination of whether or not PUI, by attempting to compel WHI to make Grease Trap Improvements to the existing grease traps at Units #847 and #889, has in effect implemented a rate increase without the Commission's approval; and, if the Commission finds for WHI, an order issued to PUI to cease and desist until such time as the Commission approves of such rate increase.
- e) If the Commission determines that the PUI's actions do not constitute an unauthorized rate increase, then an order issued to PUI to cease and desist until PUI has provided sufficient analytical evidence to the Commission for the Commission to conclude that WHI's existing grease traps do not meet the FOG effluent requirements of PUI's Standards.
- f) If the Commission determines that WHI's existing grease traps do not meet the FOG effluent requirements of PUI's Standards, then an order issued to PUI to cease and desist until PUI provides sufficient analytical evidence to the Commission for the Commission to conclude that the Grease Trap Improvements will in fact accomplish their intended purpose.
- g) A determination of the following with respect to PUI's Standards as applied to grease traps at existing restaurants: (i) whether or not the Standards are reasonable; (ii) whether or not the Standards will cause undue hardship; (iii) whether or not "PUI has the right to terminate a customer's service without notice" (see Section C, Paragraph 3 of the Standards) if the FOG level in a customer's grease trap effluent exceeds the limit established by the Standards, or whether PUI must comply with the Commission's rules and regulations regarding notice and an opportunity to be heard prior to a discontinuation of service; (iv) whether or not PUI has the right pursuant to Section C, Paragraph 6 of the Standards to require a restaurant owner, at the owner's cost, to analyze the FOG level of its grease trap effluent whenever such owner's grease trap effluent is "suspected" or "perceived" by PUI to exceed the FOG limit set forth in the Standards; and (iv) whether or not PUI's enforcement of its Standards with respect to existing restaurants is lawful.
- h) If the Commission determines that WHI should install the Grease Trap Improvements, WHI respectfully asks the Commission that WHI not be required to install an elder valve (a device for cutting off sewer service). An elder valve does not reduce levels of FOG or other particulates in a grease trap's effluent and serves only to provide PUI with a convenient and immediate means for termination of service.
- i) Such other relief as the Commission deems appropriate.